FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 565 / 2004
(Baliram Shiodas Vaidya & ors. Vs. Smt. Vatsala wd/o Chatrapati Vaidya & ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.S. Doifode, Adv. for the appellants.
Mr. N.P. Deogade, Adv. for the respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 24th September, 2007.

Heard the learned counsel for the parties.

The appellants are the original defendants. A suit was filed by the legal heirs of one Chhatrapati Vaidya, for partition and separate possession of their shares in the suit properties. It is not in dispute that the suit properties originally belonged to one Shiodas. Shiodas had four sons; Jagannath, Ramlal, Baliram and Yashwant. Jagannath, Ramlal, Baliram and Yashwant had partitioned the properties belonging to their joint family, amongst themselves. The property which fell to the share of Baliram was, therefore, the ancestral property of the plaintiffs and the defendant nos. 2 to 4, held by Baliram. According to the plaintiffs, Baliram had effected the partition of the suit properties on 15/2/1993 between his three sons i.e. the defendant nos. 2, 3 and 4- Arun, Chunnilal and Narendra, and had not granted any share to the legal heirs of his

deceased son Chhatrapati. The plaintiffs, therefore, instituted a suit for partition and separate possession of their shares.

The defendants denied the claim of the plaintiffs. They admitted the relationship of the plaintiffs with the defendants. It was pleaded in the written statement that deceased Chhatrapati had surrendered his share in the suit property in favour of his brothers by executing a relinquishment deed on 25/4/1982, after accepting an amount of Rs. 40,000/-. It was further pleaded that certain properties which were the joint family properties, were not included in the suit properties and, therefore, the suit was liable to be dismissed.

The trial Court framed the necessary issues and by the judgment dated 28/3/2001, decreed the suit of the plaintiffs and declared that the plaintiffs had 1/5th share in the suit properties. The trial Court further held that the partition effected by Baliram granting shares to his other sons, was not legal and binding on the plaintiffs. The Court further held that the defendants had failed to prove that deceased Chhatrapati had relinquished his share in the suit property by accepting an amount of Rs. 40,000/-. The Court then held that the defendants had failed to prove that the plaintiffs had not included the entire properties belonging to the joint family in the properties mentioned in the suit. The appeal filed

by the defendants against the judgment and decree passed by the trial Court, was also dismissed by the District Judge, Bhandara, by the judgment dated 26th April, 2004. The first appellate Court, by re-appreciating the evidence on record, confirmed the finding recorded by the trial Court holding that the plaintiffs are entitled to 1/5th share in the suit properties which fell to the share of Baliram and shown in Schedule A. The first appellate Court further confirmed the finding of the trial Court that the defendants had failed to prove that Chhatrapati had relinquished his share in the suit properties by accepting an amount of Rs. 40,000/-. The Court then held that the suit was not bad for non-joinder of necessary parties or for non-inclusion of certain properties in the suit properties.

I have perused the judgments passed by both the Courts. Both the Courts have properly appreciated the material evidence on record to hold that the plaintiffs are entitled to 1/5th share in the suit properties which had fallen to the share of Baliram in the partition effected between Baliram and his brothers. The submission made on behalf of the appellants that the suit was bad for non-joinder of Subhadra and Yashoda, sisters of Baliram, as the necessary parties to the suit, is liable to be rejected because the plaintiffs were seeking separate possession of their share in the suit property which

had fallen to the share of Baliram in the partition which was effected between Baliram and his brothers. In a suit filed by the respondents against Baliram and his sons, Subhadra and Yashoda, the sisters of Yashswanta, Ramlal and Baliram, could not have been the necessary parties. Moreover, the aforesaid plea of non-joinder of the necessary parties, is not raised by the defendants in their written statement.

No fault can, therefore, be found with the judgments rendered by the trial and the appellate Courts. Both the Courts have concurrently held that the partition effected by Baliram in the year 1993 was not binding on the legal heirs of deceased Chhatrapati, i.e. the plaintiffs.

For the reasons aforesaid, second appeal is dismissed with no order as to costs.

In view of the dismissal of the second appeal, all civil applications stand disposed of.

JUDGE

RMP